

**BEFORE THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric  
Company for Approval of an Amendment of  
its Power Purchase Agreement with GenOn  
Marsh Landing, LLC and for Authority to  
Recover the Costs of the Amended Agreement  
In Rates

U39E

Application No. 13-03-\_\_\_\_\_

**APPLICATION OF  
PACIFIC GAS AND ELECTRIC COMPANY (U 39-E)  
FOR APPROVAL OF AN AMENDMENT OF ITS POWER  
PURCHASE AGREEMENT WITH GENON MARSH LANDING, LLC**

**PUBLIC VERSION  
(Confidential Appendices A and B)**

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Dated: March 22, 2013

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**Confidential** Appendix A – Amendment Summary and Analysis (*Redacted*)

**Confidential** Appendix B – Amendment (*Confidential in its entirety*)

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**I. INTRODUCTION**

By this Application, Pacific Gas and Electric Company (“PG&E”) seeks California Public Utilities Commission (“Commission”) approval of an amendment (“Amendment”) to the existing Power Purchase and Sale Agreement (“PPA”) between PG&E and GenOn Marsh Landing, LLC (“GenOn”) dated September 2, 2009. The existing PPA is a ten-year agreement for PG&E to purchase energy and capacity from the Marsh Landing Facility located in Antioch, California. The PPA resulted from PG&E’s 2008 Long-Term Request for Offers (“LTRFO”) and was approved by the Commission in Decision (“D.”) 10-07-045.

The Amendment clarifies the obligations of PG&E and GenOn with regard to the calculation of compliance costs under Assembly Bill (“AB”) 32 associated with carbon dioxide emissions resulting from PG&E’s dispatch of the Marsh Landing facility (“Facility”) under the PPA. The Amendment does not increase customer costs or risks. Instead, the Amendment simply serves to clarify certain aspects of the PPA regarding the calculation of AB 32

compliance costs and the process for paying these costs. Clarifying these aspects of the PPA is beneficial because it will simplify the contract administration process and prevent future possible disputes between the parties. Because the Amendment does not increase customer costs and risks, and will facilitate PPA administration, PG&E requests expeditious approval of the Amendment and recovery of PG&E's costs under the Amended PPA through PG&E's Energy Resource Recovery Account ("ERRA").

## **II. DESCRIPTION OF THE PPA AND THE AMENDMENT**

The Marsh Landing Facility is a new, 719 megawatt ("MW") combustion turbine facility that is located in Antioch, California. The Facility is currently scheduled to come on-line in May 1, 2013. The PPA, which was approved by the Commission in July 2010, is a 10-year tolling agreement to purchase the energy and capacity associated with the Facility. The PPA includes provisions that address the allocation between the parties of costs and responsibilities associated with AB 32 compliance. However, these provisions did not include specific equations or clearly identify source data to be used to determine AB 32 compliance cost compensation. In order to clarify these provisions in the PPA, the parties negotiated and agreed to the Amendment. The specific terms of the Amendment are confidential and are described in more detail in Confidential Appendix A to this Application.<sup>1</sup> In general, however, the Amendment clarifies certain AB 32-related calculations, lists sources of data to be used, and details the methodology for determining AB 32-related compensation, and the process for paying these costs. The Amendment is intended to clarify these aspects of the PPA so that the parties' rights and

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<sup>1</sup> Appendix A has been partially redacted for confidential material. The public portions of Appendix A will be attached to the public version of this Application. The Amendment itself is included as Confidential Appendix B and is confidential in its entirety.

responsibilities are clearly defined, and to prevent future disputes between the parties regarding the PPA provisions.

### **III. CONSISTENCY WITH COMMISSION DECISIONS**

#### **A. Commission Decisions Regarding AB 32 Compliance Costs**

The Commission has generally encouraged the utilities and third-party generators to contractually address AB 32 compliance costs and risks.<sup>2</sup> In this case, PG&E and GenOn addressed AB 32 compliance costs in the PPA approved by the Commission in D.10-07-045. However, certain aspects of that agreement require clarification in order to clearly specify the data sources and methodology for calculating AB 32 compliance costs and the process for paying these costs. The Amendment is intended to clarify the AB 32 compliance cost provisions in the existing PPA to include certain AB 32-related calculations, lists sources of data to be used, and detail the methodology for AB 32-related compensation. This is type of bilateral agreement between contracting parties to avoid future disputes has been encouraged by the Commission.

#### **B. Commission Decisions Regarding Contract Amendments**

The Commission has directed the utilities to file applications seeking approval of contract amendments for non-Renewable Portfolio Standard (“RPS”)-eligible contracts.<sup>3</sup> Thus, PG&E is filing this application for approval of the Amendment consistent with this Commission precedent.

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<sup>2</sup> See e.g. D.12-04-046 at p. 61.

<sup>3</sup> D.11-04-007 at pp. 7-8.

**C. Procurement Review Group Participation**

On March 4, 2013, PG&E described the Amendment to its Procurement Review Group (“PRG”) via email and requested that PRG members provide written comments or questions. PG&E did not receive any comments or questions from the PRG.

**IV. EFFECTIVE DATE AND REQUEST FOR CONFIDENTIAL TREATMENT**

**A. Requested Effective Date**

PG&E respectfully requests that the Commission approve this Application as soon as practicable but no later than August 15, 2013. Although PG&E has proposed a schedule below that takes into account the participation of third parties as provided by the Commission’s Rules, the public benefit and limited scope of the Amendment should result in few issues for parties or Commission staff to review. If intervention is limited or non-existent, PG&E requests the procedural schedule to be shortened accordingly.

**B. Request for Confidential Treatment**

In support of this Application, PG&E provides the following Confidential Appendices:

**Confidential Appendix A** – Amendment Summary and Analysis (Redacted)

**Confidential Appendix B** – Amendment

Concurrent with the filing of this Application, PG&E has filed a separate *Motion for Leave to File Confidential Material Under Seal* (“Motion”) to protect from public disclosure confidential market sensitive information and other proprietary business information contained in the appendices to this Application. A description and analysis of the Amendment is presented in Appendix A and the Amendment is provided as Appendix B. Appendix A has been partially redacted to remove from the public version confidential market sensitive information. Appendix B has been redacted in its entirety because it includes the actual Amendment. As explained in more detail in PG&E’s Motion, and in accordance with D.06-06-066, D.08-04-023,

and General Order 66-C, PG&E requests the Commission to preserve the confidentiality of the Amendment and other market sensitive information.

**V. COMPLIANCE WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

**A. Contents of Application (Rule 2.1)**

**1. Requested Relief**

PG&E requests that the Commission find that the terms of the Amendment are reasonable and approve the Amendment in its entirety. PG&E further requests that the Commission authorize PG&E to recover costs incurred pursuant to the Amended PPA through a debit to its ERRA, subject only to the Commission's review of the reasonableness of PG&E's administration of the Amended PPA. PG&E requests that the Commission approve the Amendment as soon as practicable, but in any event no later than August 15, 2013.

**2. Statutory Authority**

PG&E makes this request and seeks the above-stated relief pursuant to Public Utilities Code Section 451 for a finding that PG&E's electricity procurement costs under the Amended PPA are just and reasonable; Section 454 for authorization to recover costs of the Amended PPA in rates; Section 454.5 for upfront approval of the Amendment as acceptable and eligible for rate recovery; Section 701 which confers plenary authority on the Commission to regulate every public utility within California; and Section 728 under which the Commission may set just and reasonable rates.

**3. Legal Name and Principal Place of Business (Rule 2.1(a))**

The Applicant's legal name is Pacific Gas and Electric Company. PG&E's principal place of business is 77 Beale Street, San Francisco, California. Its post office address is P.O.

Box 7442, San Francisco, CA 94120-7422. PG&E is a corporation organized under the laws of the State of California.

**4. Correspondence and Communication Regarding This Application (Rule 2.1(b))**

Correspondence regarding this Application should be directed to the following PG&E representatives in this matter:

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**5. Category of the Proceeding**

The Application should be categorized as a rate-setting proceeding.

**6. Need for Hearing**

The Commission should approve the Amendment without hearings, based on the information presented by PG&E in this Application.

**7. Issues To Be Considered**

The following issues should be considered in this proceeding:

- (a) Whether the Amendment proposed in this Application is reasonable and in the best interest of PG&E's customers and thus should be approved by the Commission,
- (b) Whether PG&E's execution of the Amendment is reasonable, and
- (c) Whether PG&E should be authorized to recover costs incurred pursuant to the Amended PPA in ERRRA.

**8. Proposed Schedule**

PG&E proposes the following schedule for Commission approval:



<b>ACTIVITY</b>	<b>PROPOSED SCHEDULE</b>
Application Filed	March 22, 2013
Application Noticed	April 1, 2013
Responses Filed	May 1, 2013
PG&E's Reply to Responses	May 6, 2013
Pre-Hearing Conference	May 7, 2013
Scoping Memo	May 10, 2013
Concurrent Opening Briefs Filed	May 28, 2013
Reply Briefs Filed	June 11, 2013
ALJ Proposed Decision Filed	July 9, 2013
Final Decision	August 15, 2013

**B. Organization and Qualification to Transact Business (Rule 2.2)**

PG&E is, and since October 10, 1905 has been, an operating public utility corporation organized under California law. It is engaged principally in the business of furnishing electric and gas services in California. A certified copy of PG&E's Restated Articles of Incorporation, effective April 12, 2004, is on record before the Commission in connection with PG&E's Application 04-05-005, filed with the Commission on May 3, 2004. These articles are incorporated herein by reference pursuant to Rule 2.2 of the Commission's Rules.

**C. Authority to Increase Rates (Rule 3.2)**

PG&E does not propose to modify its electric rates in this Application. Procurement costs associated with the Amended PPA will be forecasted and included in the ERRA subject to true-up and recovery through the ERRA rate.

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## VI. REQUESTED RELIEF

PG&E respectfully requests the Commission to issue an order that:

1. Finds that the terms of the Amendment are reasonable;
2. Finds PG&E's execution of the Amendment to be reasonable;
3. Approves the Amendment in its entirety, including payments to be made by PG&E pursuant to the Amended PPA, subject only to the Commission's review of the prudence of PG&E's administration of the Amended PPA;
4. Grants PG&E such other relief as the Commission finds to be just and reasonable.

Respectfully submitted,

By: /s/ Charles R. Middlekauff  
CHARLES R. MIDDLEKAUFF

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Attorney for  
PACIFIC GAS AND ELECTRIC COMPANY

Dated: March 22, 2013

## VERIFICATION

I, Roy M. Kuga, declare:

I am an officer of Pacific Gas and Electric Company, a corporation, and am authorized, pursuant to Rule 2.1 and Rule 1.11 of the Rules of Practice and Procedure of the CPUC to make this Verification for and on behalf of said Corporation, and I make this Verification for that reason. I have read the foregoing Application, and I am informed and believe that the matters therein concerning Pacific Gas and Electric Company are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 22, 2013, at San Francisco, California.

*/s/ Roy M. Kuga*

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**ROY M. KUGA**

Vice President - Energy Supply Management

**Appendix A**

**Amendment Summary and Analysis**

**(Public Version)**

**I. OVERVIEW OF AMENDMENT**

**A. Deal Structure and Purpose**

The Amendment clarifies the obligations of Pacific Gas and Electric Company (“PG&E”) to compensate GenOn Marsh Landing, LLC (“GenOn”) towards the cost of compliance with Assembly Bill (“AB”) 32 associated with carbon dioxide emissions resulting from PG&E’s dispatch of the Marsh Landing facility (“Facility”) under the Power Purchase and Sale Agreement (“PPA”) between PG&E and GenOn. The PPA was approved by the Commission in July 2010 in Decision (“D.”) 10-07-045. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**B. GHG Compliance Costs**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. Costs and Benefits of Amendment**

The Amendment is neutral in terms of quantifiable costs and benefits to customers. [REDACTED]

[REDACTED]

[REDACTED] To the

extent that the Amendment will enable ease of contract administration and prevent

possible future disputes, the Amendment has non-quantifiable benefits.

**II. DETAILED DESCRIPTION OF AMENDMENT PROVISIONS**

*Note: Capitalized terms have the meanings provided by Amendment or the PPA, unless otherwise noted.*

Term/Condition	Details
Amendment Scope	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
Emissions Quantity	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

Term/Condition	Details
Financial Compensation: Carbon Dioxide (CO <sub>2</sub> ) Emissions Payment	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Physical Compensation: Compliance Instruments	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Additional Documentation	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>



<b>Term/Condition</b>	<b>Details</b>
Mark to Market Calculation	[Redacted]

*Confidential Under D.06-06-066 and General Order 66-C*

## **Appendix B**

## **Amendment**

***THIS APPENDIX IS  
CONFIDENTIAL IN ITS ENTIRETY***